

SUPPRESSION OF SCHOLARSHIP ON PALESTINE AT THE UNIVERSITY OF TORONTO

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OVERVIEW

The University of Toronto's Faculty of Law came under widespread criticism after being accused of caving to external pressure from a sitting federal judge and university donor not to hire Dr. Valentina Azarova as director for its renowned International Human Rights Program (IHRP) because of her scholarship on Israel's occupation of the Palestinian territories.¹

An **external review** was subsequently conducted by former Supreme Court of Canada justice Thomas Cromwell, which ultimately exonerated the university and its senior administrators of any wrongdoing.² The inquiry itself has been the subject of widespread criticism from the legal community.

In the meantime, UofT has been censured by the Canadian Association of University Teachers (CAUT) for its actions surrounding the hiring scandal; the IHRP has been without a Director for two academic years; and the university has ignored calls to reinstate Dr. Azarova in the IHRP Director position. The judge in question – Justice David Spiro of the Tax Court of Canada – was the subject of a complaint to the Canadian Judicial Council and despite finding he made “serious mistakes”, he will remain on the bench.³

THE SCANDAL

In August 2020, prominent international legal scholar Valentina Azarova was unanimously selected by a three-person committee to fill the Director position of the faculty of law's International Human Rights Program (IHRP). According to the Cromwell report, of the 140 applicants for the position, Dr. Azarova was the “strong, unanimous and enthusiastic first choice of the selection committee”, with “glowing” references.⁴

On September 4, 2020 around the same time that Dr. Azarova was engaged in advanced

- ¹ See Masha Gessen, “Did a University of Toronto Donor Block the Hiring of a Scholar for Her Writing on Palestine?”, *The New Yorker* (8 May 2021), online: <https://www.newyorker.com/news/our-columnists/did-a-university-of-toronto-donor-block-the-hiring-of-a-scholar-for-her-writing-on-palestine>; Sean Fine, “U of T Law school under fire for opting not to hire human-rights scholar after pressure from sitting judge”, *The Globe and Mail* (17 September 2020); Shree Paradkar, “Search for new director of U of T law faculty's International Human Rights Program leads to resignations, allegations of interference”, *The Toronto Star* (17 September 2020), online: <https://www.thestar.com/news/gta/2020/09/17/search-for-new-director-of-u-of-t-law-facultys-international-human-rights-program-leads-to-resignations-allegations-of-interference.html>; Sean Fine, “U of T law dean denies offering scholar job, caving to Tax Court judge's pressure”, *The Globe and Mail* (18 September 2020).
- ² The Honourable Thomas A. Cromwell C.C., “Independent Review of the Search Process for the Directorship of the International Human Rights Program at the University of Toronto, Faculty of Law” (March 15, 2021), online: <https://www.president.utoronto.ca/secure-content/uploads/2021/03/Report-of-the-Hon-Thomas-A-Cromwell-CC-%E2%80%93-March-15-2021.pdf>. [Cromwell Report]
- ³ Canadian Judicial Council, Press Release, “Canadian Judicial Council completes its review of the matter involving the Honourable D.E. Spiro” (21 May 2021), online: <https://cjc-ccm.ca/en/news/canadian-judicial-council-completes-review-matter-involving-honourable-de-spiro>.
- ⁴ Cromwell Report, *supra* at 5 and 11.

negotiations about the details of her hiring with the Assistant Dean of the law school, a phone call occurred between Justice David Spiro, a Tax Court of Canada judge and major donor to the University of Toronto, and the Assistant Vice President (AVP) of the university (presumed to be Chantelle Courtney) in which the judge disclosed to the AVP that he had learned of the potential appointment of Dr. Azarova to the IHRP.⁵ Justice Spiro disclosed that he learned of the confidential information from a staff member of an organization of which he had been a director of prior to his appointment to the bench (David Spiro was a previous director of the Centre for Israel and Jewish Affairs (CIJA)).⁶

The staff inquiry to Justice Spiro included an email and memorandum entitled “*U of T pending appointment of major anti-Israel activist to important law school position*” and asked:

“[i]f someone could quietly find out the current status, and confirm [Azarova’s] pending appointment, that would be very helpful. The hope is that through quiet discussions, top university officials will realize that this appointment is academically unworthy, and that a public protest campaign will do major damage to the university, including in fundraising.”⁷

According to the Cromwell Report, Justice Spiro asked the AVP about the appointment of a new IHRP Director, naming Dr. Azarova. He indicated that as a judge he could not become involved, but “*wanted to alert the University that if the appointment were made it would be controversial and could cause reputational harm to the University and particularly to the Faculty of Law. He wanted to ensure that the University did the necessary due diligence.*”⁸

There were a series of communications between the AVP, the Assistant Dean of Alumni and Advancement at the law school (presumed to be Jennifer Lancaster), and the Assistant Dean of the Juris Doctor (JD) program (Alexis Archbold, who was also one of the members of the hiring committee) – none of which involved stating that the hiring process was strictly confidential and that no further information could be provided. In fact, the Assistant Dean of the JD program confirmed that Dr. Azarova was indeed the candidate to her fellow Assistant Dean but indicated that no final hiring decision had been made.⁹ This information was ultimately communicated back to Justice Spiro through the AVP, despite it being part of a confidential hiring process.

Also on September 4, the law school’s then Dean, Edward Iacobucci (whose term as Dean ended in December 2020), became involved in the hiring process for the first time. He was briefed about Justice Spiro’s objections to Dr. Azarova by the Assistant Dean of Alumni and Advancement and also called Professor Audrey Macklin, the chair of the hiring committee, to inform her of the donor’s call and discuss the candidate. Over the labour day weekend, the Dean also reviewed Dr. Azarova’s dossier, the status of her work permit, the independent contractor arrangement, and her request to be absent from campus for a portion of the summer break. In addition, the Dean arranged phone calls with both the university Provost (the second most senior administrator in the entire university next to the President) as well as the Vice President of Human Resources and

⁵ *Ibid* at 31.

⁶ *Ibid*.

⁷ *Ibid* at 31-32.

⁸ *Ibid* at 32.

⁹ *Ibid* at 33.

Equity, Kelly Hannah-Moffat, referring to Justice Spiro’s concern as a “complicating factor”.

By September 6, the Dean made the decision to discontinue the hiring process with Dr. Azarova, overriding the decision of the selection committee. He called Professor Macklin to notify her of his intention to terminate the process. The Dean emailed the formal decision to terminate the hire on September 9.

IMMEDIATE FALL OUT

The events caused significant unrest within the UofT community as well as amongst academics, lawyers, and activists domestically and abroad. Following the announcement that Dr. Azarova would no longer be hired, Professor Audrey Macklin resigned from the position in protest. Vincent Wong, a second member of the hiring committee, resigned from his paid position as a Research Associate with the IHRP, citing a lack of “objectivity, fairness, and transparency” in the director search process.¹⁰ The IHRP’s entire program advisory board, comprised of Professors Vincent Chiao, Trudo Lemmons, and Anna Su, also resigned *en masse* in Fall 2020. They, along with several other faculty professors, **wrote** to the university Vice President and Provost seeking to expose the “high-handed manner of governance” that allowed such an incident to occur.¹¹

Over 1400 lawyers and academics also signed an **open letter**, noting that the treatment of Dr. Azarova in Canada is consistent with a broader and intensifying climate of suppression of Palestinian speech globally.¹² Signatories to the letter include Angela Davis, Noam Chomsky, Ilan Pappé, Noura Erakat, Judith Butler, and former United Nations Special Rapporteur on the situation of human rights in the Palestinian

Territory, Richard Falk. Another letter signed by 145 IHRP students and alumni was also sent to former Dean Iacobucci in September 2020, calling for a “thorough and public review of donor practices at the law school, as well as of the alleged improper external influence and pressure by, in this case, a member of the judiciary.”¹³

Moreover, international law scholars, including the University of Haifa’s Professor Itamar Mann questioned the legitimacy of the interpretation given to Dr. Azarova’s scholarship, noting “While she has been critical of the Israeli government’s long-standing policies in occupied territories, her position is both grounded in international law and generally shared by a large number of legal scholars both in Israel and outside of the country.”¹⁴ There is widespread agreement that even while controversial views cannot be censored, those of Dr. Azarova’s are not considered radical. They adhere to mainstream legal consensus on Israeli settlements in the occupied Palestinian territories.¹⁵

¹⁰ CAUT Report, *supra*, at 8.

¹¹ Letter from Vincent Chiao, Associate Professor of Law; Anver Emon, Professor of Law; Mohammad Fadel, Professor of Law; Ariel Katz, Associate Professor of Law; Trudo Lemmons, Professor of Law; Jeffrey MacIntosh, Professor of Law; Denise Reaume, Professor of Law; Kent Roach, Professor of Law; and David Schneiderman, Professor of Law to Cheryl Regehr, Vice President and Provost (7 October 2020), online: http://ultravires.ca/wp/wp-content/uploads/2020/10/Letter_to_Provost-distd.pdf.

¹² Azeeda Kanji, David Palumbo-Liu, and Dania Majid, “Repression of speech and scholarship on Palestine needs to end”, Al Jazeera (1 October 2020), online: <https://www.aljazeera.com/opinions/2020/10/1/repression-of-speech-and-scholarship-on-palestine-needs-to-end/>.

¹³ Open letter from IHRP students and alumni to Dean Edward Iacobucci (17 September, 2020), online: https://docs.google.com/document/d/1ukoJ2r_08aCB-f6jclrzbdC6LqztewxwY2JQYrVEgz4g/edit. See also Letter from Current and Former Members of the IHRP Alumni Network Steering Committee to Dean Edward Iacobucci re: Concerns Regarding Interference in Hiring Process for the IHRP’s New Director (13 September 2020 and 23 September 2020), online: <http://ultravires.ca/wp/wp-content/uploads/2020/09/Letters-from-IHRP-Alumni-Network-Steering-Committee-Members-Sep-23-13.pdf>.

¹⁴ Sean Fine, “U of T Law school under fire for opting not to hire human-rights scholar after pressure from sitting judge”, The Globe and Mail (17 September 2020).

¹⁵ Shree Paradkar, “Search for new director of U of T law faculty’s International Human Rights Program leads to resignations, allegations of interference”, The Toronto Star (17 September 2020).

THE EXTERNAL REVIEW

In October 2020, in response to the widespread criticism, UofT announced that it would conduct an “impartial review” into the search for a new Director for the IHRP, initially retaining Professor Bonnie Patterson to serve as the external reviewer.¹⁶ This came under immediate criticism because the final report was originally to be provided to Dean Iacobucci, to the VP of HR & Equity, Kelly Hannah-Moffat, and to the University Provost, individuals who already denied that an offer was made and also publicly defended the Dean’s decision to terminate the hiring of Dr. Azarova.¹⁷ Concerns were also raised that the Terms of Reference avoided important aspects of the case, namely whether academic freedom was breached and whether or not Dr. Azarova was in fact offered a job.

In response to criticisms regarding the transparency and impartiality of its process, UofT modified its review, **announcing** on October 29, 2020 that Prof. Patterson would report directly to UofT President Meric Gertler and that the full report and its recommendations would be made public.¹⁸ After the decision to change the review’s format, another **open letter** was published by several Faculty of Law professors outlining their continuing concerns with the review, including that the mandate failed to explicitly deal with issues of academic freedom.¹⁹ They also raised concerns with the selection of Prof. Bonnie Patterson as the external reviewer, noting that in 2001 during a controversy involving the closure of two historic colleges at Trent University, which Patterson was then President of, she reprimanded Prof. George Nader for speaking out against their closure. Afterward, Nader was refused reappointment as principal of Peter Robinson College. A CAUT review – in which Patterson refused to

participate – concluded that Nader’s academic freedom had been infringed.²⁰ The authors stated that Patterson’s involvement as the subject of a very similar complaint made her an inappropriate reviewer for such a matter. Moreover, she did not have the required legal expertise in immigration and employment law to answer some of the key legal questions that the review should assess.

On December 7, 2020, President Meric Gertler **announced** that Prof. Patterson had resigned after doubts were raised about her “impartiality as an independent reviewer” and “the credibility of the report she was to have prepared.”²¹ He noted that neither he nor Prof. Patterson accepted the validity of these claims. He also announced that the inquiry would now be led by former Supreme Court of Canada justice Thomas Cromwell, and provided a **Terms of Reference** for the review.²²

¹⁶ Kelly Hannah-Moffat, Memo No 2020-78 “Statement on the Search Process for a Director of the International Human Rights Program at the Faculty of Law”, University of Toronto, Division of Human Resources & Equity (14 October 2020), online: <https://hrandequity.utoronto.ca/memos/statement-on-the-search-process-for-a-director-of-the-international-human-rights-program-at-the-faculty-of-law/>.

¹⁷ “U of T investigation of hiring controversy flawed: CAUT”, Canadian Association of University Teachers (15 October 2020), online: <https://www.caut.ca/jat-est/2020/10/u-t-investigation-hiring-controversy-flawed-caut>.

¹⁸ President Meric Gertler, “Statement on the External Review of the Search Process for a Director of the International Human Rights Program of the Faculty of Law”, University of Toronto, Office of the President (29 October 2020), online: <https://hrandequity.utoronto.ca/wp-content/uploads/2020/10/10-29-Statement-on-External-Review-IHRP.pdf>.

¹⁹ Letter from Vincent Chiao, Associate Professor of Law; Anver Emon, Professor of Law; Mohammad Fadel, Professor of Law; Ariel Katz, Associate Professor of Law; Trudo Lemmons, Professor of Law; Jeffrey MacIntosh, Professor of Law; Denise Reaume, Professor of Law; Kent Roach, Professor of Law; David Schneiderman, Professor of Law; and Anna Su, Associate Professor of Law to President Meric Gertler (29 October 2020), online: <http://ultravires.ca/wp/wp-content/uploads/2020/10/To-President-Gertler-re-IHRP-Review-Process-final.pdf?fbclid=IwAROM18xrMflxFGutYsu2j7lCQoTo4oBRKkpo4wOrcJlq-dXPQH3MVZl5gEco>.

²⁰ Marta Anielska, “CAUT begins censure process against U of T over IHRP hiring controversy”, *The Varsity* (25 October 2020), online: <https://thevarsity.ca/2020/10/25/caut-begins-censure-process-against-u-of-t-over-ihrp-hiring-controversy/>.

²¹ President Meric Gertler, “Statement on Updates to the External Review of the Search Process for a Director of the International Human Rights Program at the Faculty of Law”, University of Toronto, Office of the President (7 December 2020), online: <https://drive.google.com/file/d/1pTHtzf8AZyYofa0Dyx3j-TX-2eN7DqnAy/view>.

²² *Ibid* at 3.

The **external review** of the incident conducted by Mr. Cromwell was released on March 29, 2021. The report laid out detailed facts of the events, making no findings of credibility, and ultimately exonerated the university and the Dean.²³

The Cromwell review concluded that no offer and acceptance in the strict legal sense had occurred between the university and Dr. Azarova, but rather that the parties were at an advanced stage of negotiations.²⁴

The Dean provided the following explanations for terminating Azarova's hire: 1) that there was a hard starting date of September 30, 2020 (an issue that two members of the hiring committee disputed); 2) that the independent contractor arrangement was illegal; and 3) that other qualified Canadian candidates existed who could start by September 30, 2020 (also disputed by two members of the hiring committee). Cromwell, again having done no credibility assessment, seemed to have simply taken the Dean's word for it that those explanations were true.

Cromwell concluded that the decision of Dean Iacobucci to discontinue the candidacy of Dr. Azarova was not due to external alumni influence, but rather to technical and legal constraints involving cross-border hiring as well as the faculty's timing needs.²⁵ He found no significant gaps in the university's policy framework, although recognized that there were clear breaches of confidentiality with regard to the hiring process. Cromwell did not opine on the role, if any, of academic freedom in the recruitment process for position. Several recommendations were identified, including a need to reaffirm that external pressure would not play a role in recruitment decisions. The review also recommended that the university engage in a process of reconciliation with Dr. Azarova.²⁶

A **response** to the review issued by University President Meric Gertler confirmed that the university would accept and implement all of its recommendations, and that a letter of apology had been issued to Dr. Azarova for the fact that confidentiality was not maintained in the search process.²⁷

RESPONSE TO THE CROMWELL REPORT

The Cromwell Report faced extensive blowback, with many finding its conclusions disappointing and unconvincing, underlining the troubling relationships between external donors and universities.²⁸ It has been questioned why, if the technical and legal barriers no longer exist, Dr. Azarova can no longer be offered the Director position.²⁹

²³ The Honourable Thomas A. Cromwell C.C., "Independent Review of the Search Process for the Directorship of the International Human Rights Program at the University of Toronto, Faculty of Law" (March 15, 2021), online: <https://www.president.utoronto.ca/secure-content/uploads/2021/03/Report-of-the-Hon-Thomas-A-Cromwell-CC-%E2%80%93-March-15-2021.pdf>.

²⁴ *Ibid* at 12.

²⁵ *Ibid* at 46-56.

²⁶ *Ibid* at 69-75.

²⁷ President Meric Gertler, "President's Response to the Independent Review of the Search Process for the Directorship of the International Human Rights Program at the University of Toronto, Faculty of Law, by the Honourable Thomas A. Cromwell, C.C.", University of Toronto, Office of the President (29 March 2021), online: <https://www.president.utoronto.ca/secure-content/uploads/2021/03/Presidents-Response-to-the-Report-of-Hon.-Thomas-A.-Cromwell-CC.pdf>.

²⁸ See Joseph H Carens, "Academic Freedom and the Power of University Donors: Dogs That Don't Bark and Other Reflections on the Cromwell Report at the University of Toronto" (23 April 2021), online: <http://ultravires.ca/wp/wp-content/uploads/2021/04/Carens-Academic-Freedom-and-University-Donors-3.pdf>; Letter from Anver M Emon, Professor of Law; Mohammad Fadel, Professor of Law; Ariel Katz, Associate Professor of Law; Trudo Lemmons, Professor of Law; Jeffrey MacIntosh, Professor of Law; Denise Réaume, Professor of Law; and David Schneiderman, Professor of Law; to President Meric Gertler ((20 April 2021), online: <http://ultravires.ca/wp/wp-content/uploads/2021/04/Professors-Letter-to-President-Final.pdf>; Anver M Emon, "On the Cromwell Report: Spiro and External Influence", online: <http://ultravires.ca/wp/wp-content/uploads/2021/05/Cromwell-and-Philanthropy.pdf>; Joe Friesen and Sean Fine, "University of Toronto hiring decision not affected by judge: report", *The Globe and Mail* (29 March 2021); Joe Friesen, "U of T report underlines troubling relationship between donors and academia", *The Globe and Mail* (1 April 2021); Shree Paradkar, "External review exonerates U of T in faculty hiring fiasco, but exposes what critic calls a 'goldmine of impropriety'", *The Toronto Star* (31 March 2021); Alan Freeman, "The hiring scandal at the University of Toronto that was supposed to die", *iPolitics* (1 April 2021), online: <https://ipolitics.ca/2021/04/01/the-hiring-scandal-at-the-university-of-toronto-that-was-supposed-to-die/>; "UoFT Report Exposes Pro-Israel Attempts to Interfere in Hiring Process for Law School Director", *Canadians for Justice and Peace in the Middle East (CJPME)* (31 March 2021), online: https://www.cjpme.org/pr_2021_03_31_uoft_report.

²⁹ See Shree Paradkar, "U of T could right the wrong - by hiring the 'highly qualified' human rights scholar whose appointment it scuttled", *The Toronto Star* (1 April 2021).

A key concern is why Cromwell limited himself to only setting out the facts about which there were no dispute when there were critical facts *in dispute* that he should have addressed in the report.³⁰ For instance, Réaume observes that Cromwell treats the following as true, undisputed facts when in reality each claim is disputed:

- that the Dean acknowledged Justice Spiro’s intervention to Professor Audrey Macklin but described it as ‘irrelevant’ rather than as ‘an issue that it was unnecessary to get to’
- that the starting date was September 30, 2020 rather than ‘before the January 2021 term’
- that the independent contractor arrangement necessary to permit Dr. Azarova to start by September 30 was not feasible, and
- that there were qualified Canadian candidates.³¹

It has also been observed that Cromwell decontextualized the conversation between Justice Spiro and university advancement staff, thereby underplaying the power and lobbying dynamics truly at play.³² Emon states that Cromwell gives an innocent interpretation to the exchange between Justice Spiro and the AVP, noting that he concluded that Spiro “simply shared the view that the appointment would be controversial with the Jewish community and cause reputation harm to the University.”³³ In other words, Cromwell concluded there was no external influence and that Spiro’s intent was simply informative in nature.³⁴ Professor Emon notes that CIJA is a vocal proponent of Israel in Canada and one which is overseen by influential wealthy donors – many of whom have been donors to both the University of Toronto and its law school – and

it is therefore relevant in considering Justice Spiro’s conversation with the AVP at the UofT – something that was left out entirely from the Cromwell report.³⁵

To make matters worse, it also came to light that after Cromwell was retained by UofT to conduct the review, he agreed to act as the keynote speaker at CIJA’s annual conference on February 9, 2021³⁶ – the same group that had tipped off Justice Spiro about the Azarova hiring and prompted the inquiry to UofT in the first place. Despite this, the former SCC judge did not recuse himself from the review process.

Vincent Wong, one of the members of the hiring committee and a former IHRP employee who resigned in protest over the incident, wrote a poignant response to the Cromwell Report, noting that the exoneration “speaks volumes about the logics that work [to] create a powerful presumption of innocence for elite white males in the Canadian legal field.”³⁷ Wong observes that Cromwell simply “takes the Dean’s word for it” in accepting his denial that any external influence factored into the hiring decision.³⁸ He also identifies that this “confuses concluding that the donor issue was a *factor* in the decision with concluding

³⁰ See Richard Moon, “Bad Times at a Great University and Its Law School” (21 April 2021) Centre for Free Expression (blog), online: <https://cfe.rverson.ca/blog/2021/04/bad-times-great-university-and-its-law-school>; Denise Réaume, “An Analysis of the Cromwell Report”, online: <http://ultravires.ca/wp/wp-content/uploads/2021/05/Analysis-of-Cromwell-Report.pdf>.

³¹ Réaume, *supra*, at 1.

³² See Réaume, *supra*, at 4-6; Anver E Emon, “On the Cromwell Report: Spiro and External Influence”, online: <http://ultravires.ca/wp/wp-content/uploads/2021/05/Cromwell-and-Philanthropy.pdf>.

³³ Emon, *supra*, at 2.

³⁴ *Ibid* at 2-3.

³⁵ *Ibid* at 4.

³⁶ Yves Engler, “Judge cozies up to Israel lobby in conflict of interest” (19 January 2021), online: <https://yvesengler.com/tag/justice-thomas-cromwell/>; Alan Freeman, “The hiring scandal at the University of Toronto that was supposed to die”, iPolitics (1 April 2021), online: <https://ipolitics.ca/2021/04/01/the-hiring-scandal-at-the-university-of-toronto-that-was-supposed-to-die/>.

³⁷ Vincent Wong, “What the IHRP Hiring Scandal Tells us About Intersectional Privilege in Canadian Legal Institutions”, Opinio Juris (6 April 2021), online: <http://opiniojuris.org/2021/04/06/what-the-ihrp-hiring-scandal-tells-us-about-intersectional-privilege-in-canadian-legal-institutions/>.

³⁸ *Ibid*.

that it was *the primary factor*.³⁹ Wong goes on to observe that at least some of Cromwell's recommendations – including that members of the selection committee sign written confidentiality agreements – were suggested presumably so the University could hold those members legally liable for going public with information about wrongdoing they perceived to be in the public interest, as he and Professor Audrey Macklin did.⁴⁰ He concludes by observing that the consequences speak for themselves:

Dr. Azarova has still lost her job; I as a person of colour have lost my job in order to truthfully bring details of this incident to light; Palestinian rights and international law with respect to the Israel/Palestine situation are now demonstrably a taboo subject in the law school; and the powerful white men who are at the heart of this impropriety have thus far escaped any sort of formal accountability.

CAUT CENSURE

The Canadian Association of University Teachers (CAUT), a federation of independent associations and trade unions that represents 72,000 academic and general staff at 125 universities and colleges across Canada, also raised concerns and took action against the University of Toronto.

On April 22, 2021, in a 79-0 decision (with one abstention) delegates to the CAUT Council voted to censure UofT, finding on a balance of probabilities that the Dean's decision to terminate the hiring process was influenced by Justice Spiro's intervention such that fundamental principles of academic freedom, collegial governance, and institutional autonomy were violated.⁴² The CAUT Council concluded that the decision to cancel Dr. Azarova's hiring was politically motivated, and as such constituted a serious breach of the

principles of academic freedom.⁴³ It also found that the University administration did not adequately remedy the situation, noting that it could have re-offered the still-vacant IHRP Director position to Dr. Azarova but had not.⁴⁴

A censure is a rarely imposed sanction in which CAUT members are asked not to accept appointments at the censured institution; not to accept invitations to speak or participate in academic conferences there; and not to accept any distinction or honour that may be offered by that institution, according to CAUT procedures.⁴⁵ The last time CAUT applied a censure was in 2008 for governance violations at First Nations University.⁴⁶

The University of Toronto responded to the censure by stating that it was unwarranted and doubling down on the findings and recommendations of the Cromwell Report.⁴⁷

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² See Canadian Association of University Teachers, "Why did CAUT Council censure the U of T administration?", PowerPoint (27 May 2021), online: <https://www.dropbox.com/s/u2izgqh63prvyhe/Presentation%20to%20UTFA%20meeting%20re%20censure%20%2B2021%2005%2027%29.pdf?dl=0>; Memorandum from David Robinson, CAUT Executive Director Re: Motion of Censure Against the Administration of the University of Toronto (20 April 2021), online: https://drive.google.com/file/d/1qxV8qNH-h7ocr-BBOVN_xozMbiOWbdNO/view; "CAUT Council imposes rare censure against University of Toronto over Azarova hiring controversy", Canadian Association of University Teachers (22 April 2021), online: <https://www.caut.ca/latest/2021/04/caut-council-imposes-rare-censure-against-university-toronto-over-azarova-hiring>. See also Canadian Association of University Teachers, "CAUT Report on Academic Freedom at the Faculty of Law, University of Toronto" (October 2020), at 6 online: https://council.caut.ca/sites/default/files/1_caut_report.pdf.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ "Procedures Relating to Censure", *Canadian Association of University Teachers*, online: <https://www.caut.ca/about-us/caut-policy/lists/administrative-procedures-and-guidelines/procedures-relating-to-censure>.

⁴⁶ CAUT Council imposes rare censure against University of Toronto over Azarova hiring controversy", *Canadian Association of University Teachers* (22 April 2021), online: <https://www.caut.ca/latest/2021/04/caut-council-imposes-rare-censure-against-university-toronto-over-azarova-hiring>.

⁴⁷ Letter from President Meric S Gertler (23 April 2021), online: <http://ultravires.ca/wp/wp-content/uploads/2021/05/2021-04-23-Presidents-letter.pdf>; Memorandum from Kelly Hannah-Moffat, Vice-President, Human Resources & Equity and Cheryl Regehr, Vice-President & Provost Re: CAUT Censure (27 May 2021), online: https://www.dropbox.com/s/jk7o8btu5wq8c3j/PDADC_Memo_CAUT%20Censure.pdf?dl=0.

The CAUT censure had immediate and powerful consequences on the University of Toronto, with resignations and cancellations beginning just days after the censure was imposed.⁴⁸ On April 23, 2021, another prominent faculty of law professor Kent Roach resigned from his post as Faculty Chair of the Advisory Group for the David Asper Centre for Constitutional Rights in protest, citing concerns related to academic freedom and the need to protect clinical instructors.⁴⁹

A large number of university-wide events have also been cancelled, including those with high profile speakers such as the Right Honourable Michaëlle Jean, who was to give a talk at the Faculty of Social Work on systemic racial discrimination but postponed after pressure from well-known Black intellectuals and others to respect the censure.⁵⁰ Events were also cancelled by former Member of Parliament Celina Caesar-Chavannes⁵¹ and author and activist Harsha Walia⁵², among many others.

In addition to the cancellations, numerous organizations and individuals have ended their formal partnerships with the university, at least until it rectifies its actions in the Azarova matter. On May 5, 2021, Leilani Farha, the former United Nations Special Rapporteur on the Right to Housing, announced that her organization, The Shift, would no longer engage in a partnership or work with the IHRP, including ceasing undertaking of any speaking engagements, appointments or collaborative activities at UofT until Professor Azarova receives a formal apology and is extended an offer of employment.⁵³ Global human rights organization Amnesty International wrote to the university on May 18, 2021 advising that it was pausing its four-year partnership with the IHRP, citing great concern for the sequence of events surrounding the decision not to hire Dr. Azarova as IHRP Director.⁵⁴ Other IHRP

partners – the Butterfly (Asian and Migrant Sex Workers Support Network), Citizen Lab, the HIV Legal Network, and the Immigration Legal Committee – also announced that they would not renew their partnerships until concerns related to academic freedom were addressed and the censure was lifted.⁵⁵

Human rights lawyer and Director of the First Amendment Institute at Columbia University, Jameel Jaffer, announced that he would be ending his affiliation as a Distinguished Fellow with UofT's Munk School of Global Affairs in light of the censure.⁵⁶ Similarly,

⁴⁸ See Censure UofT, online: <https://censureuoft.ca/>; ALT_IHRP, @AltIhrp, online: <https://twitter.com/altihrp?lang=en>. An updated list of resignations and cancellations is available at Censure UofT, online: <https://censureuoft.ca/events-cancelled/>

⁴⁹ Letter from Professor Kent Roach to Dean Jutta Brunnée (23 April 2021), online: https://drive.google.com/file/d/1AilEUh6e9PuDFqfia_Gw1cOe9zclLU/view

⁵⁰ Michaëlle Jean, "Statement on my decision to postpone a lecture on systemic racial discrimination at the #FactorInwentashFacultyofSocialWork @UofT @CAUT_ACPPU #UofTcensure #BlackScholars" (6 May 2021), online: <https://twitter.com/MichaelleJeanF/status/1390361129315143685>; "Request from Black intellectuals asking Michaëlle Jean to respect censure of the University of Toronto" (6 May 2021), online: https://docs.google.com/forms/d/e/1FAIpQLSehHsKoYAEIbjZfJ4JltWWsZ1MdBSDT4pq8xFr_HnhdTnPBWA/viewform; Shree Paradkar, "Michaëlle Jean pulls out of planned lecture at U of T over law school hiring fiasco, as several groups cut ties", *Toronto Star* (6 May 2021), online: <https://www.thestar.com/news/gta/2021/05/06/michalle-jean-pulls-out-of-planned-lecture-at-u-of-t-over-law-school-hiring-fiasco.html>

⁵¹ Celina Caesar-Chavannes, "I have cancelled this event in support of @CAUT_ACPPU's decision to censure @UofT. I add my name to the list of Black Intellectuals and students calling on others to do the same. If the university is committed to #equity, it will hold its leadership accountable." (5 May 2021), online: <https://twitter.com/iamcelinacc/status/1389958566447091713>

⁵² Harsha Walia, "I have turned down an event & cancelled another upcoming event at U of T. In full support of @CAUT_ACPPU's decision to censure U of T for breach of academic freedom and withdrawal of Dr. Azarova's employment offer & her important work on Palestine and international legal rights." (30 April 2021), online: <https://twitter.com/HarshaWalia/status/138827391257075715>

⁵³ Letter from Leilani Farha, Global Director, The Shift to Meric Gertler, President, University of Toronto and Jutta Brunnée Dean of Law University of Toronto Faculty of Law (5 May 2021), online: <http://ultravires.ca/wp/wp-content/uploads/2021/05/UofT-and-Law-CAUT-Censure-2.pdf>

⁵⁴ Letter from Joanne Mariner, Director Crisis Response, Amnesty International, International Secretariat; Ketty Nivyabandi, Secretary General, Amnesty International Canada; and Sam Dubberley, Head, Evidence Lab, Amnesty International, International Secretariat to President Meric Gertler and Dean Jutta Brunnée, University of Toronto Faculty of Law (18 May 2021), online: <https://www.amnesty.ca/sites/default/files/AMR2041442021ENGLISH.PDF>

⁵⁵ Letter from Elene Lam, Executive Director, Butterfly (Asian and Migrant Sex Workers Support Network) and MacDonald Scott, Member, Immigration Legal Committee to Meric Gertler, President, University of Toronto and Jutta Brunnée Dean of Law University of Toronto Faculty of Law (23 April 2021), online: <http://ultravires.ca/wp/wp-content/uploads/2021/05/Butterfly-and-ILC-Letter-on-CAUT-Censure.pdf>; profdeibert, "After careful deliberation of my own and in consultation with my team @citizenlab, we have decided that we cannot collaborate with the @UTLaw because of the @IHRP_UofT appointment decision, and as long as the @CAUT_ACPPU #UofTcensure is in effect. 1/" (8 May 2021), online: <https://twitter.com/RonDeibert/status/1391093762894487553>; Letter from Richard Elliot, Executive Director, HIV Legal Network to President Meric Gertler and Dean Jutta Brunnée (6 May 2021), online: <http://ultravires.ca/wp/wp-content/uploads/2021/05/HIVLegalNetwork-ltr-UofT-IHRP-6May2021.pdf>

⁵⁶ Jameel Jaffer, "Very sorry to do this but in the circumstances I don't feel like I have any choice." (8 May 2021), online: <https://twitter.com/JameelJaffer/status/1391175490396905474>

Janani Shanmuganathan, who had been recently appointed to serve as Co-Chair of the University Tribunal announced that until the censure was lifted and the university restored its commitment to academic freedom, she would be unable to accept the appointment.⁵⁷ In addition, at least two law firms stated that they would no longer be accepting applicants from UofT law school as a means of respecting the censure.⁵⁸

Several other organizations and individuals have issued statements of solidarity in support of the censure, including academics from University of Toronto Scarborough Campus (over 100 signatories)⁵⁹; Jewish Faculty at the University of Toronto (25 signatories)⁶⁰; the Equity & Solidarity Studies Student Union (ESSU) Executive Team, 2021 (over 3000 signatories)⁶¹; the University of Toronto Law Union⁶²; the Indigenous Education Network⁶³; and the CUPE 3907 Executive Committee.⁶⁴ Numerous scholars and public figures from across the globe have pledged to observe the censure, including Dionne Brand, Naomi Klein, Angela Davis, David Suzuki, Noura Erakat, Noam Chomsky, Wole Soyinka, Richard Falk, Arundhati Roy, Saskia Sassen, Judith Butler, Ruth Wilson Gilmore, Setsuko Thurlow, Sherene Razack, Mahmood Mamdani, Deepa Mehta, and many more.⁶⁵

CANADIAN JUDICIAL COUNCIL COMPLAINT

Justice David Spiro's involvement in the Azarova matter sparked a number of official complaints to the Canadian Judicial Council (CJC), a body which has the authority to investigate and discipline judicial misconduct.⁶⁶

The CJC announced on January 11, 2021 that it would constitute a five-person Review Panel in respect of the complaints filed relating to Justice Spiro's alleged interference in the appointment of a Director of the IHRP.⁶⁷

On May 21, 2021, the CJC announced that the Judicial Conduct Review Panel had completed its review of the matter involving Justice David Spiro and concluded that while the judge made a serious a mistake in raising the concerns in the manner he did, they were not serious enough to warrant a recommendation for his removal from office.⁶⁸ The Panel took note of that fact that the judge recognized his mistakes and expressed remorse.⁶⁹

⁵⁷ Letter from Janani Shanmuganathan to Dean Jutta Brunnée (14 May 2021), online: <http://ultravires.ca/wp/wp-content/uploads/2021/05/2021-05-14-Letter-to-Dean-Brunnee-re-University-Tribunal.pdf>

⁵⁸ See Sherif Foda, "Hey @UTLaw, I will no longer welcome any applicants from your law school at my firm for any placements or positions until you rectify the situation with @censureutoronto. I know some might say this is unfair to students. To those people, I say #FreePalestine." (8 May 2021), online: <https://twitter.com/SherifMFoda/status/1391174660054716422>; Saron Gebresellasi, "Effective immediately our Firm's Toronto Office has temporarily delisted @UofT & @UTLaw from our roster for clinical partnerships until it satisfies the conditions to lift the rare censure invoked by @CAUT_ACPPU. We look forward to speedy resumption upon the lifting of sanctions." (10 May 2021), online: <https://twitter.com/SaronGeb/status/1391823083460337664>.

⁵⁹ "Open letter from UTSC members on the CAUT censure to Professor Wisdom Tetey, Principal and Professor William Gough, Vice Principal Academic & Dean, University of Toronto Scarborough", online: <https://docs.google.com/forms/d/e/1FAIpQLSfWNNkHegxwPTUhpzvhi5qQf7jlbxxi-eHaRi-FlnleTOZZQ/viewform>.

⁶⁰ "#UofTScandal: Jewish Faculty at the University of Toronto in Support of the CAUT Censure", (17 May 2021), online: <https://censureuoft.ca/2021/05/17/jewish-faculty/>.

⁶¹ "Open Letter to UofT: We demand the immediate restoration of Dr. Azarova's job offer!" (13 May 2018), online: https://docs.google.com/forms/d/e/1FAIpQLSfOb4Dxic_7REYyNxVttjn5PKd9ZFIByi87OMUV_zO1IF7g/viewform.

⁶² University of Toronto Law Union, "Statement of Support for CAUT Censure from the University of Toronto Law Union" (5 May 2021), online: <https://drive.google.com/file/d/1FmeOcPRwhk6aFZ1181UdZ6JbbQl0qnJ/view>.

⁶³ Professor Jeffrey Ansloos et al, "Indigenous Education Network Response to CAUT Censure of University of Toronto" (6 May 2021), online: https://www.oise.utoronto.ca/ien/EN_Response_to_CAUT_Censure_of_University_of_Toronto.html.

⁶⁴ "CUPE 3907 supports the CAUT censure of UofT" (19 May 2021), online: <https://3907.cupe.ca/2021/05/19/cupe-3907-supports-the-caut-censure-of-uoft/>.

⁶⁵ See "Pledge to Respect the CAUT Censure of UofT", online: <https://uoftcensurepledge.wordpress.com/>.

⁶⁶ At least one of the complaints was submitted by Professor Leslie Green of Queen's University and is available here: <http://ultravires.ca/wp/wp-content/uploads/2020/10/CJC-20-09-29.pdf>.

⁶⁷ Canadian Judicial Council, Press Release, "Canadian Judicial Council constitutes a Review Panel in the matter involving the Honourable DE Spiro" (11 January 2021), online: <https://cjc-ccm.ca/en/news/canadian-judicial-council-constitutes-review-panel-matter-involving-honourable-de-spiro>.

⁶⁸ Canadian Judicial Council, Press Release, "Canadian Judicial Council completes its review of the matter involving the Honourable D.E. Spiro" (21 May 2021), online: <https://cjc-ccm.ca/en/news/canadian-judicial-council-completes-review-matter-involving-honourable-de-spiro>. See also Aidan McNab, "Canadian Judicial Council closes complaint against Justice David Spiro", Law Times (24 May 2021), online: https://www.lawtimesnews.com/resources/professional-regulation/canadian-judicial-council-closes-complaint-against-justice-david-spiro/356435?utm_source=GA&utm_medium=20210525&utm_campaign=LTW-Newsletter-20210525&utm_content=A03C5F4C-5A11-4AB9-B8C1-3DAA693435D5&tu=A03C5F4C-5A11-4AB9-B8C1-3DAA693435D5.

⁶⁹ *Ibid.*

Similar to the Cromwell Report, the Review Panel found that Justice Spiro was voicing his concerns about the potential impact of the appointment and associated controversy on the University and the Faculty, as opposed to actively campaigning or lobbying against the appointment.⁷⁰ The Panel also concluded that there was no suggestion of perceived bias on his part against Palestinian, Arab or Muslim interests.⁷¹

Only days after the Spiro CJC complaint was closed, Senator Marc Gold introduced legislative amendments to the *Judges Act* aimed at strengthening the judicial complaints process, originally established 50 years ago.⁷² The proposal, if passed, would amend and streamline the process for more serious complaints, where removal from the bench could be an outcome. It would also impose mandatory sanctions on a judge when a complaint of misconduct is found to be justified, but is not serious enough to warrant removal from office. Such sanctions would include counselling, continuing education and reprimands.⁷³

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Department of Justice Canada, News Release, "Government of Canada introduces legislation to foster greater confidence in the judicial system" (25 May 2021), online: <https://www.canada.ca/en/department-justice/news/2021/05/government-of-canada-introduces-legislation-to-foster-greater-confidence-in-the-judicial-system.html>.

⁷³ *Ibid.*

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